

CC:LM:F:HAR:POSTF-113657-02
BAJohnson

subject: [REDACTED]

This memorandum responds to your request for assistance dated March 4, 2002. This memorandum should not be cited as precedent.

You requested advice as to whether [REDACTED], as trustee for the [REDACTED] Family Trust f/b/o [REDACTED] ([REDACTED]) ("Trust") can enter into a consent to extend the statute of limitations on behalf of [REDACTED] Limited Partnership ("Partnership") with respect to the taxable year [REDACTED]. Since the [REDACTED] Trust is the tax matters partner for the Partnership for [REDACTED], [REDACTED], as trustee of this trust, may act on behalf of the Partnership.

Issue

Whether [REDACTED] as trustee of the [REDACTED] Trust, may enter into a consent to extend the statute of limitations for [REDACTED] on behalf of the Partnership. **UIL No.: 6501-08.08**

Facts

On [REDACTED] created [REDACTED]
[REDACTED] Family Trust ("Family Trust") under the laws of the
Commonwealth of Massachusetts. The irrevocable trust was for the
benefit of family members. [REDACTED] and [REDACTED]
[REDACTED] were the trustees. Under Article [REDACTED] of the Family
Trust, the trustees were directed to "[REDACTED]
[REDACTED]."

" Although no documentation was provided showing the establishment of the separate trusts, it appears from the Partnership agreement that

separate trusts were established on [REDACTED]¹
 (Trust Nos. [REDACTED] through [REDACTED] and Trusts f/b/o [REDACTED]
 [REDACTED], f/b/o [REDACTED] and f/b/o [REDACTED]
 [REDACTED]).

You furnished a letter of resignation as trustee dated [REDACTED], from [REDACTED] relating to the [REDACTED] Family Trust f/b/o [REDACTED]. For purposes of this advisory, we assume that [REDACTED] also resigned from the [REDACTED] Trust as she was a trustee for the Family Trust.

On [REDACTED], [REDACTED] pursuant to the provisions of Article [REDACTED] of the Family Trust, irrevocably released any power to remove a trustee of the Family Trust. Again, pursuant to Article [REDACTED] of the Family Trust, [REDACTED] appointed [REDACTED] as trustee of this trust. Thereafter, [REDACTED], the co-trustee, under the provisions of Article [REDACTED] of the Family Trust, delegated all of his powers as a trustee of that trust to [REDACTED] for the following periods:

Date of Delegation

[REDACTED]

End of Delegation

[REDACTED]

As of [REDACTED] and [REDACTED] Corporation, as general partners, and [REDACTED] (" [REDACTED] ") and [REDACTED] (" [REDACTED] "), as limited partners, entered into a limited partnership agreement creating the Partnership, a certificate for which was filed in Delaware. By the first amendment to the Certificate of Limited Partnership as of [REDACTED], [REDACTED] transferred his [REDACTED] %

¹ Amendment [REDACTED] to the Certificate of Limited Partnership, filed [REDACTED], states the dates of these trusts as "[REDACTED]". Thereafter, the dates of the trusts, other than Trust [REDACTED] and the [REDACTED] Trust, were shown as "[REDACTED]" in subsequent Partnership amendments. As the trusts were apparently in existence at the filing of the [REDACTED] amendment, it appears that the "[REDACTED]" date is in error.

limited partnership interest in equal shares to [REDACTED] Trust Nos. [REDACTED] through [REDACTED] and [REDACTED] transferred his [REDACTED] % limited partnership interest in equal shares to [REDACTED] Trust Nos. [REDACTED] through [REDACTED]. [REDACTED] and [REDACTED] also withdrew as limited partners of the Partnership.

As of [REDACTED] by Amendment [REDACTED] to the Certificate of Limited Partnership, [REDACTED] Trust Nos. [REDACTED] through [REDACTED] and [REDACTED] Trust Nos. [REDACTED] through [REDACTED] withdrew their limited partnership interests in the Partnership after transferring their respective interests equally to [REDACTED] Family Trust f/b/o [REDACTED], [REDACTED] Family Trust f/b/o [REDACTED], [REDACTED] Family Trust f/b/o [REDACTED], [REDACTED] Family Trust f/b/o [REDACTED], [REDACTED] Family Trust f/b/o [REDACTED], and [REDACTED] Family Trust f/b/o [REDACTED].

As of [REDACTED], by Amendment [REDACTED] to the Certificate of Limited Partnership, [REDACTED] Corporation ("[REDACTED]") transferred its [REDACTED] % general partnership interest in equal shares to general partners [REDACTED] and [REDACTED]. [REDACTED] remained as the managing general partner.

As of [REDACTED] by Amendment [REDACTED] to the Certificate of Limited Partnership, (1) [REDACTED] transferred his [REDACTED] % general partnership interest in equal shares to [REDACTED] Family Trust f/b/o [REDACTED], [REDACTED] Family Trust f/b/o [REDACTED], and [REDACTED] Family Trust f/b/o [REDACTED]; and (2) [REDACTED] transferred his [REDACTED] % general partnership interest in equal shares to [REDACTED] Family Trust f/b/o [REDACTED], [REDACTED] Family Trust f/b/o [REDACTED], and [REDACTED] Family Trust f/b/o [REDACTED]. Following the transfers, [REDACTED] and [REDACTED] withdrew from the Partnership.

As of [REDACTED], by Amendment [REDACTED] to the Certificate of Limited Partnership, [REDACTED] and [REDACTED] and [REDACTED] reflected the assignment of general partnership interests set forth in Amendment [REDACTED].

On [REDACTED], the [REDACTED] received an undated U.S. Partnership Return of Income, Form 1065, from the Partnership for [REDACTED]. The return was signed by [REDACTED].

In the Form 1065, "██████████ TRUST F/B/O ██████████ TIN ██████████" was designated at the Tax Matters Partner ("TMP").

On ██████████, Revenue Agent ██████████ sent a letter, a Notice of Beginning of Administrative Proceeding and a memo to "██████████ Trust F/B/O ██████████" as the TMP for the Partnership. Attached to a letter dated ██████████, from ██████████ of ██████████, LLP, one of the authorized representatives of the Partnership, is a Power of Attorney (Form 2848) for the Partnership dated ██████████ and signed "██████████ TEFRA Partnership by: ██████████ Family Trust f/b/o ██████████ (██████████), by: (signed) ██████████, ██████████ Trustee". On the line for printing the name of the signer, is typed "██████████".

Discussion

Section 6229(a)^{1/2} provides for assessing any tax with respect to any person which is attributable to any partnership item within three years from filing the partnership return. This period may be extended with respect to all partners, by an agreement entered into by the Secretary and the TMP or other authorized person. Section 6229(b)(1)(B).

Section 6231(a)(7)(A) defines the TMP as the general partner designated as the TMP in the regulations. Treas. Reg. § 301.6231(a)(7)-1(b)(1) defines a person who may be designated TMP as a general partner in the partnership at some time during the taxable year for which the designation is made or a general partner in the partnership as of the time the designation is made. Section 7701 includes a trust within the definition of person for purposes of the Code. Massachusetts law provides that a trustee may perform any act necessary or appropriate to administer the trust. Mass. Ann. Laws ch 191B, § 13(a)(22).

Since (1) ██████████ as trustee of the Family Trust (including the separate beneficiary trusts such as the ██████████ Trust), had the power to act on behalf of the ██████████ Trust; (2) the ██████████ Trust was a general partner of the Partnership during ██████████ (3) ██████████, a trustee of ██████████ Trust, a general partner, signed the ██████████ return; and (4) the ██████████ Trust was designated as the TMP on the ██████████ partnership return, ██████████, in her fiduciary capacity, is the proper party to sign the Consent to

^{1/2} All statutory references are to the Internal Revenue Code in effect during the years at issue, unless otherwise noted.

Extend the Time to Assess Tax Attributable to Items of a Partnership, Form 872P, on behalf of the Partnership for [REDACTED]

The form of the signature block for the TMP on the Form 872P should read as follows:

[REDACTED] Family Trust f/b/o [REDACTED]
[REDACTED] ([REDACTED]), Tax Matters Partner

by: [REDACTED], Trustee

We are simultaneously submitting this memorandum to the National Office for post-review and any guidance they may deem appropriate. We will inform you of any modification or suggestions, and, if necessary, we will send you a supplemental memorandum incorporating any such recommendation. We are enclosing the documents you sent us with your request for our review.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

Since there is no further action required by this office, we will close our file in this matter ten days from the issuance of this memorandum or upon our receipt of written advice from the National Office, whichever occurs later. Please call Bradford A. Johnson at (860) 290-4077 if you have any questions or require further assistance.

BRADFORD A. JOHNSON
Associate Area Counsel
(Large and Mid-Size Business)

Enclosure: As noted.